

2006-000008

**FREEDOM OF INFORMATION ACT REQUEST
HQ-APP-00057-06**

REQUESTER: Marc Edwards

Request Date: February 23, 2006

COMPANY: Virginia Tech

Received Date: March 08, 2006

FEE Category: Educational & Scientific
Institutions

Subject: Copies of e-mails sent to and from certain EPA employees from
06/01/02 to the present

Due Date: 4/5/2006

ASSIGNMENTS:

OGC - Action
REGION 3 - FYI

SPECIAL INSTRUCTIONS:

OGC - Action
REGION 3 - FYI

(ref. 03-RIN-01428-05)

IF COSTS ARE EXPECTED TO
EXCEED \$25.00, CONTACT
REQUESTER FOR PAYMENT
COMMITMENT BEFORE
PROCESSING REQUEST.

REC'D BY / DATE

FIS INITIALS: LP



VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

The Charles Edward Via, Jr. Department of
Civil and Environmental Engineering

418 New Engineering Building, Mail Code 0246
Blacksburg, Virginia 24061
Phone: (540) 231-6131 Fax: (540) 231-7916

US Environmental Protection Agency
Office of Environmental Information
Records, FOIA and Privacy Branch (2822T)
1200 Pennsylvania Avenue, NW
Washington DC 20460

Appeal
OGC - Action
Reg. 3 - FYI
2/23/06 HQ-APP-00057-06
(ref. 03-PIN-01428-05)

I am appealing the withholding of all documents listed in the attached letter, except for the interagency agreement No. DW8993898201-5, and the e-mail related to draft proposal for early warning monitoring (EWMS Proposal).

As a class, internal EPA communications are not automatically exempt from FOIA requests. To qualify for this privilege, the withheld records must be pre-decisional (e.g., "antecedent to the adoption of an agency policy). I do not think a compliance determination or a lead response plan has anything to do with adoption of an agency policy. In addition, the small portion that might be deemed deliberative must be "so intertwined with the deliberative process that they would reveal the process." If it is necessary to deem part of an e-mail deliberative, it should be possible to release other parts of the e-mail after deleting the portions that are exempt.

On the "draft 2004 performs plan," this also is not pre-decisional to agency policy, and the e-mail is not part of a personal file.

On the interview from Rizzo to Rogers and Y. Roundtree, I do not think this is protected under attorney client privilege. Mr. Rizzo is not a party to the lawsuit in question, nor is EPA, nor is Mr. Rizzo apparently seeking any legal advice at the instruction of his superior. This is apparently not even an internal EPA communication. Mr. Roundtree is not representing EPA or Mr. Rizzo. Questions were asked and Mr. Rizzo responded. The e-mail was sent outside of the agency.

On the e-mail message from R. Rogers to G. Rizzo re: WASA final Financial Slides, and the other one where exemption 7 is mentioned, there is no enforcement action that is planned against WASA to my knowledge. The agencies had a consent agreement and enforcement action is not planned. This exemption is limited *only to the period during which law enforcement proceedings are actually contemplated or pending.*

Please call me at (540) 231-7236 if you should have any questions about this letter.

Regards,

Marc Edwards
Charles Lunsford Professor of Civil Engineering



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JAN 20 2006

Mr. Marc Edwards, PhD
Virginia Polytechnic Institute
and State University
407 Durham Hall
Blacksburg, VA 24060

Re: FOIA Request No. 03-RIN-01428-05

Dear Mr. Edwards:

This letter is in response to your Freedom of Information Act (FOIA) request, dated August 5, 2005, referenced above, in which you requested copies of e-mails sent to and from certain EPA employees from June 1, 2002, to the present. Copies of documents responsive to your request were provided to you on September 2, 2005, and September 20, 2005.

We cannot provide you with copies of certain documents which are responsive to your request because they contain information which has been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. §§ 552 (b)(2), (5), (6), (7)(A), and (7)(E). Exemption 2 permits the withholding of documents related solely to the internal personnel rules and practices of the Agency whose release would risk circumvention of Agency regulations or statutes. Exemption 5 permits the withholding of any inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency. Exemption 6 permits the withholding of information about individuals in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Exemption 7(A) permits the withholding of any records or information compiled for law enforcement purposes whose release could reasonably be expected to interfere with enforcement proceedings. Exemption (7)(E) permits the withholding of records or information compiled for law enforcement purposes if such disclosure would disclose techniques and procedures for law enforcement investigations or prosecutions. A list of the withheld documents, along with the basis for their withholding is enclosed.

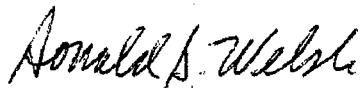
You may appeal this partial denial by submitting a written appeal to U.S. Environmental Protection Agency, Office of Environmental Information, Records, FOIA, and Privacy Branch (2822T), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, within 30 calendar days of the date of this letter. Your appeal should include the above referenced RIN number, the date of this determination, and my name, title, and address.



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474*

If you should have any questions regarding this matter, please contact Rick Rogers at (215) 814-5711.

Sincerely,



Donald Welsh
Regional Administrator

cc: Richard Van Holt(3CG00)



FOIA Request No. 03-RIN-01428-05

List of Documents Withheld

Document Identification	Document Description	Date of most recent e-mail	Applicable Exemption
E-mail message from P. Boyle ¹ to R. Seneca, re: FW: Lead letter DOH.	forwards email string from Jon Capacasa to Rich Kampf, Don Welsh, Tom Damm which contains EPA internal discussion related to comments on and EPA response to a D.C. Department of Health (DCDOH) draft letter intended to go to residents with lead service lines	02/24/04	Exempt under 5 U.S.C. § 552 (b)(5)-Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.
E-mail message from V. Binetti to J. Capacasa re: Post - Lead in Drinking Water stories.	Replies to Email from J. Capacasa copying Tom Voltaggio, Karen Johnson, Rick Rogers regarding developing Agency response to Washington Post article on findings from research of lead regulation implementation and lead testing from across the country	09/27/04	Exempt under 5 U.S.C. § 552 (b)(5)-Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.

¹ All persons listed are employees of EPA Region III.

Document Identification	Document Description	Date of most recent e-mail	Applicable Exemption
E-mail message from R. Rogers to G. Rizzo re: Revised EWMS proposal.	forwards draft proposal for and early warning monitoring system in the District of Columbia to help detect terrorist attacks on the water supply	11/24/03	Exempt under 5 U.S.C. §§ 552 (b)(2) and (5)–Documents related solely to the internal personnel rules and practices of the Agency whose release would risk circumvention of agency regulations or statutes; Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.
E-mail message from J. Capacasa to K. Johnson re: Message from J. Capacasa - DC Emergency Management Meeting.	Email also copying V. Binetti regarding planned meeting with District of Columbia's Deputy Mayor and staff. Email contains discussion on the possible development of an enforcement action against WASA	03/02/04	Exempt under 5 U.S.C. §§ 552 (b)(5) and (7)(E)–Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional; Documents compiled for law enforcement purposes whose release would disclose techniques and procedures for law enforcement investigations or prosecutions.
E-mail message from V. Binetti to R. Rogers re: FW: Lead letter DOH.	forwards email from J. Capacasa to several senior EPA officials; contains EPA deliberations on our comments and response to draft DCDOH letter to D.C. citizens about lead in drinking water, which was attached to J. Capacas's email	02/23/04	Exempt under 5 U.S.C. § 552 (b)(5)–Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.

Document Identification	Document Description	Date of most recent e-mail	Applicable Exemption
E-mail message from R. Rogers to G. Rizzo, cc'ing J. Saxe re: FW: Jan-Jun compliance sampling- latest version w/letter.	forwards E-mail string to G. Rizzo starting with L. Donahue E-mail to K. Johnson and S. Shamet; forwarded to R. Rogers and J. Saxe; Email string contains EPA internal deliberations on <u>compliance determination of DCWASA's Jan-June 2005 LCR compliance report</u>	07/15/05	Exempt under 5 U.S.C. § 552 (b)(5)—Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.
E-mail message w/attachment from G. Rizzo to R. Rogers, et al re: Acceptance of IA Funding Document: Interagency Agreement No. DW8993898201-5.	forwards interagency agreement document related to homeland security related work to be done at the Washington Aqueduct	04/10/03	Exempt under 5 U.S.C. §§ 552 (b)(2) and (5) — Documents related solely to the internal personnel rules and practices of the Agency whose release would risk circumvention of agency regulations or statutes; Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.
E-mail message from G. Rizzo to R. Rogers and Y. Roundtree re: Interview by Dept. of Labor.	forwards summary of G. Rizzo's interview to supervisor and attorney with the Department of Labor regarding personnel claim filed against DCWASA by former DCWASA employee	05/08/03	Exempt under 5 U.S.C. § 552 (b)(5)—Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional. This document is also protected under the attorney/client privileged of exemption 5.

Document Identification	Document Description	Date of most recent e-mail	Applicable Exemption
E-mail message w/attachment from G. Rizzo to R. Rogers re: Revised EWMS Proposal.	forwards revised draft proposal for and early warning monitoring system in the District of Columbia to help detect terrorist attacks on the water supply	11/24/03	Exempt under 5 U.S.C. §§ 552 (b)(2) and (5)—Documents related solely to the internal personnel rules and practices of the Agency whose release would risk circumvention of agency regulations or statutes; Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.
E-mail message w/attachment from R. Rogers to G. Rizzo re: draft 2004 performs plan.	forward of draft employee performance plan from supervisor to employee	06/04/04	Exempt under 5 U.S.C. §§ 552 (b)(5) and (6)—Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional; Documents in personnel, medical, or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
E-mail message from R. Rogers to G. Rizzo re: WASA Final Financial Slides.	email contains discussion related to EPA Clean Water Act enforcement action against DCWASA	05/27/04	Exempt under 5 U.S.C. §§ 552 (b)(5) and (7)(A)—Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional; Documents compiled for law enforcement purposes whose release could reasonably be expected to interfere with enforcement proceedings.

Document Identification	Document Description	Date of most recent e-mail	Applicable Exemption
E-mail message w/attachment from R. Rogers to G. Rizzo re: WASA PE report.	forward of internal, draft comments from L. Donahue and deliberations on making a compliance determination on <u>DCWASA's LCR Public Education Report</u> .	10/26/04	Exempt under 5 U.S.C. § 552 (b)(5)–Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.
E-mail message w/attachment from R. Rogers to G. Rizzo re: For Discussion - Response Plan for DC Lead.	forward from J. Capacasa of draft, internal EPA Region III response plan to D.C. lead in drinking water issue.	02/17/04	Exempt under 5 U.S.C. § 552 (b)(5)–Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.
E-mail message w/attachment from R. Rogers to G. Rizzo re: Response Plan - ver 2.	forward from J. Capacasa of 2 nd version of draft, internal EPA Region III response plan to D.C. lead in drinking water issue with staff commentary.	02/17/04	Exempt under 5 U.S.C. § 552 (b)(5)–Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.
E-mail message w/attachment from R. Rogers to G. Rizzo & V. Binetti re: Davis letter draft response	forward of internal comments on Region's draft response to Representative Davis's letter of February 2, 2004	02/06/04	Exempt under 5 U.S.C. § 552 (b)(5)–Internal EPA communications which contain deliberations and/or conclusions which are pre-decisional.